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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,857	12/01/2003	Sharon Lesk	7288-102/10312532	2832
167	7590	08/29/2006	EXAMINER	
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,857

Applicant(s)

LESK ET AL.

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 18-21 and 24-27 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each claim, "the groove" lacks antecedent basis, as a "grooved ring" fails to define one particular groove.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-7 and 12 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Ho (Figure 5) (5,947,322). Ho discloses a container comprising a receptacle (1) adapted to be received in a motor vehicle drink holder (see column 1, lines 19-32), the receptacle comprising a closed bottom, a top with an opening and a sidewall that connects the bottom and the top, and means (bottom of 1) at the bottom of the receptacle for supporting a plant stem (see Figure 5).

As to claim 4, Ho discloses a ring (2).

As to claims 5 and 6, Ho discloses the ring (2) as detachable and grooved to secure to the receptacle.

As to claim 7, Ho discloses the container configured to stand on its own when removed from a drink holder.

As to claim 12, the container bottom is permanently connected to the bottom of the container.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 8-9, 13, 15 and 22-23 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ho in view of Sakamoto (3,477,175). Ho has been explained above. Sakamoto discloses a plant stem supporting means (14) comprising a set of prongs (24) disposed in a plant stem receptacle. To modify the plant container of Ho employing the prongs of Sakamoto would have been obvious in order to support the plant stems, as suggested by Sakamoto.

As to claims 13, 15 and 23, Sakamoto disclose the supporting means (14) being removably connected at the bottom of its receptacle.

7. Claim 22 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 8 above, and further in view of Stone. Stone discloses a flower supporting means that is permanently connected to its container. To modify the

removable supporting means of the combination by rendering it permanently secured similar to Stone would have been obvious in order to make its use required, as in the manner of Stone.

8. Claims 3, 12 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ho in view of Stone (2,057,856). Stone discloses a plant stem supporting means comprising a frog (10). To modify the plant container of Ho employing the frog of Stone would have been obvious in order to support the plant stems, as suggested by Stone.

As to claims 12 and 16, Stone discloses the supporting means (10) being permanently connected to the bottom of the receptacle.

9. Claim 17 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 3 above, and further in view of either one of Sakamoto and Luiperseek. Sakamoto and Luiperseek each disclose a flower supporting means that is removably connected to its container. To modify the permanent frog of Stone by rendering it removable similar to either one of Sakamoto and Luiperseek would have been obvious in order to make its use selective, as in the manner of Sakamoto and Luiperseek.

10. Claims 18, 21, 24 and 27 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as employed against claims 6 and 9 above and further in view

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of Holtkamp Jr. (5,477,640). Holtkamp discloses a detachable grooved ring (12 or between 14 and 22) disposed about the top of a plant and having a groove (containing 32 or containing 12) extending completely around the ring. To modify the plant container of Ho employing the ring with a groove as taught by Holtkamp Jr. would have been obvious in order to provide an air freshener capability to the plant container, as suggested by Holtkamp Jr..

11. Claims 19-20 and 25-26 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as employed against claims 6 and 9 above and further in view of Matthews (6,516,563). Matthews discloses a detachable grooved ring (24) disposed about the top of a plant and having a groove (30 and/or 32) that is discontinuous or extends partially around the ring. To modify the plant container of Ho employing the ring with a groove as taught by Matthews would have been obvious in order to provide an adjustable container for nutrients for the plant, as suggested by Matthews.

12. Claims 10 and 11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Ho in view of Sakamoto. Ho discloses inserting a plant part into a container (1 or 2) and placing the container in a motor vehicle drink holder (3 or 1). Sakamoto discloses a plant stem supporting means comprising a set of prongs (24) disposed in the bottom of a plant container. To modify the plant container of Ho employing

As to claim 11, to subsequently remove the plant container from the drink holder to display the plant container externally of the motor vehicle would have been an obvious manipulation to one of ordinary skill in the field of using plant containers.

13. Applicant's arguments filed June 13, 2006 have been fully considered but they are not persuasive. The additional structure as to frogs, prongs, rings with a groove all have already been recognized in the field of flower containers, and add no new and unexpected result by their inclusion in the basic container. Applicants' claiming of the supporting means as either permanent or removable indicates their interchangeability in the context of the present invention, and effectively argues against either being critical. The prior art indicates that supporting means may be permanently or removably provided.

Applicant's arguments with respect to claims 18-21 and 24-27 have been considered but are moot in view of the new ground(s) of rejection.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ragot discloses prongs (5) to engage flower stems. Holtkamp Jr. ('472) is similar to the employed Holtkamp Jr. reference. Masters discloses a flower container ring of a partial or discontinuous nature.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Bryon P. Gehman', with a long horizontal flourish extending to the right.

Bryon P. Gehman
Primary Examiner
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BPG